



STATE OF INDIANA
ALCOHOL AND TOBACCO COMMISSION

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J & K Barnett, Inc.)
d/b/a Vineyard #1)
7710 S. Meridian St.)
Indianapolis, IN 46217)

Permit #DL49-14275

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

I.

BACKGROUND OF THE CASE

J & K Barnett, Inc., d/b/a Vineyard #1, 7710 S. Meridian St., Indianapolis, Indiana 46217 ("Permittee") is the holder of an Alcohol and Tobacco Commission permit type 217, permit #DL49-14275. The Permittee is charged with the following violations occurring on October 15, 2009:

Furnishing alcohol beverage to minor, Indiana Code 7.1-5-7-8.

Allowing a minor to loiter. Indiana Code 7.1-5-7-10 (b).¹

The hearing on the merits was conducted before Hearing Judge E. Edward Dunsmore on June 3, 2010. The Alcohol and Tobacco Commission ("Commission") was represented by the Prosecutor, Jennifer D. Drewry. The Permittee appeared by Ronald J. Barnett, owner; George Heubel, clerk; and Ralph Roehling, manager. Witnesses were sworn, evidence was heard, the parties presented final arguments and the matter was taken under advisement. Hearing Judge E. Edward Dunsmore, having reviewed the tape recorded transcript of the hearing, the evidence submitted to the Commission at the hearing and the contents of the entire file, now tenders his Proposed Findings of Fact and Conclusions of Law for recommendation to members of the Commission.

II.

EVIDENCE SUBMITTED BEFORE THE COMMISSION

The following exhibits were introduced by the Prosecutor against the Permittee in this cause:

1. The contents of the entire Commission file ("ATC file").
2. Indiana State Excise Police Citation Report regarding an incident occurring on October 15 2009, at Vineyard #1, Indianapolis, IN.
3. Copy of Indiana Excise Police Report of Permit Visit and Evaluation issued to J & K Barnett Inc., d/b/a Vineyard #1, for Furnishing Alcoholic Beverages to a Minor in violation of IC 7.1-5-7-8 and Allowing a Minor to Loiter in violation of IC 7.1-5-7-10(b) regarding an incident occurring on October 15, 2009, at the Vineyard #1 in Indianapolis, IN.
4. One copy of a photograph of a youth known as Minor Jacob IU#30010, DOB 2/4/90.

The following exhibits were introduced by the Permittee on behalf of the Permittee in this cause:

None

¹ Originally charges were also filed for: No Employee Permit and Employee Record of Permit Required. These charges were disposed of by means of a deferral pursuant to a Parties Agreed Disposition.

The following individuals testified on behalf of the Prosecutor against the Permittee in this cause:

1. Indiana Excise Police Officer Josh Mosier
2. A youth known as Minor Jacob IU #30010, DOB 2/4/90.
3. Indiana Excise Police Officer Randy Weitzel

The following individuals testified on behalf of the Permittee in this cause:

1. Ronald J. Barnett, owner
2. George Heubel, clerk
3. Ralph Roehling, manager

III. FINDINGS OF FACT

1. The Permittee, J & K Barnett, Inc., d/b/a Vineyard #1, 7710 S. Meridian St., Indianapolis, Indiana 46217, is the holder of a type 217 permit, permit #DL49-14275 (ATC file).
2. J & K Barnett, Inc. is the owner of Vineyard #1. (Permit Violation Hearing, ATC file).
3. The Permittee, by and through George Heubel, admitted that employee/clerk George Heubel sold alcoholic beverages to a minor identified as Jacob IU # 30010, without asking for his age, date of birth or checking his identification to determine his age, and that said sale occurred on October 15, 2009. (Permit Violation Hearing).
4. On Thursday, October 15, 2009, at approximately 3:15 p.m., Indiana Excise Police Officers Josh Mosier and Randy Weitzel were conducting random, unannounced inspections at locations where alcoholic beverages are sold or distributed, pursuant to IC 7.1-5-7-16 and IC 7.1-5-7-17. These inspections are commonly known as Survey of Alcohol Compliance (“SAC”) checks. (Permit Violation Hearing; ATC file).
5. Officer Mosier and a minor, known as Jacob IU # 30010, DOB 2/4/1990 (“Jacob”), conducted a SAC check at Vineyard #1 in Indianapolis, Indiana. (Permit Violation Hearing; ATC file).
6. On October 15, 2009, at approximately 3:15 p.m., Jacob and Officer Mosier (in plain clothes) entered Vineyard#1 in unidentified capacities.(ATC file; Permit Violation Hearing)
7. While inside Vineyard #1, Jacob pick up a 24 oz. can of Bud Light beer from the store shelf. Jacob then took the beer to the counter and placed the beer on the counter. Employee/clerk George Heubel then scanned the alcoholic beverage and advised Jacob of the price. Jacob then paid the clerk for the beverage. (ATC file; Permit Violation Hearing).
8. Officer Mosier and Jacob left Vineyard #1 shortly thereafter. At no time while inside the permit premises was Jacob asked his age, date of birth, or for identification. (Permit Violation Hearing; ATC file).
9. Officer Weitzel was outside the permit premises and prepared a Notice of Violation and entered the permit location and identified himself verbally and by show of identification to clerk Heubel and manager Roehling. Officer Weitzel showed clerk Heubel a picture of Minor Jacob and then completed a Notice of Violation and explained the violations to Heubel and Roehling. Manager Roehling signed and received a copy of the Notice of Violation charges of: 1. Furnishing alcoholic beverage to a minor, Indiana Code 7.1-5-7-8 and 2. Allowing a minor to loiter, Indiana Code 7.1-5-7-10(b) (Permit Violation Hearing; ATC file).

10. The permittee, J & K Barnett, Inc. d/b/a Vineyard #1, had failed a previous SAC check without being charged and this was a follow-up visit. (Permit Violation Hearing: ATC file).
11. The Permittee, according to the testimony of George Huebel, clerk and Ralph Roehling, believes that:
 - a. The Excise Officer (Mosier) by his conduct (asking questions regarding products prices) was attempting to, and did in fact, distract the clerk and thus cause a violation.
 - b. This is only the second violation at the permit premises since 1984.
(Permit Violation Hearing)

IV.
CONCLUSIONS OF LAW

1. The Commission has jurisdiction over these proceedings and over this permittee. Indiana Code 7.1-3-19-1; Indiana Code 7.1-3-23-2
2. The definition of a permittee includes an agent, a servant, or other person acting on behalf of a permittee, whenever a permittee is prohibited from doing an act under this title. Indiana Code 7.1-1-3-30(b)
3. George Heubel (employee/clerk) was an agent or other person acting on behalf of a permittee, namely, J & K Barnett, Inc., d/b/a Vineyard #1. Indiana Code 7.1-1-3-30(b)
4. A minor means a person less than 21 years of age. Indiana Code 7.1-1-3-25
5. It is unlawful for a permittee to recklessly permit a minor to be in the prohibited place beyond a reasonable time in which an ordinary, prudent person can check identification, or confirm the age of a patron. Indiana Code 7.1-5-7-10(b)
6. A prohibited place includes a tavern, a bar, or other public place where alcoholic beverages are sold, bartered, exchanged, given away, provided or furnished. Indiana Code 7.1-5-7-10(a)
7. It is unlawful for a permittee to allow a minor on his permit premises, except as provided in Indiana Code 7.1-5-7-11 and Indiana Code 7.1-5-7-13 --- 905 IAC 1-15.2-1(b); Indiana Code 7.1-2-3-7
8. It is unlawful for a person to recklessly, knowingly or intentionally sell, barter, exchange, provide or furnish an alcoholic beverage to a minor. Indiana Code 7.1-5-7-8
9. Defenses to furnishing alcohol are provided in Indiana Code 7.1-5-7-5.1
10. The burden of proof rests upon the permittee (seller) to establish the defense provided in Indiana Code 7.1-5-7-5.1; *Mulread v. State*, 7 N.E. 884 (Ind. 1886); *Fehn v. The State*, 29 N.E. 1137 (Ind. App. 1892)
11. The permittee, J & K Barnett, Inc., d/b/a Vineyard #1, by virtue of its relationship with George Heubel (employee/clerk) is guilty of the violations of recklessly furnishing alcoholic beverage(s) to a minor and allowing a minor to loiter. Indiana Code 7.1-5-7-8 and Indiana Code 7.1-5-7-10(b)
12. The weight of the evidence and burden of proof do not sustain any of the defenses to unlawfully furnishing alcohol to a minor and allowing a minor to loiter as provided for in IC 7.1-5-7-5.1
13. The weight of the evidence, burden of proof and status of the law do not sustain the defenses of: a) distraction or b) good reputation as a defense. Indiana Code 7.1-5-7-5.1; Indiana Code 7.1-5-7-17
14. The permittee, J & K Barnett, Inc., d/b/a Vineyard #1, is guilty of recklessly furnishing alcoholic beverage(s) to a minor pursuant to Indiana Code 7.1-5-7-8 and allowing a minor to loiter pursuant to Indiana Code 7.1-5-7-10 (b).

WHEREFORE, the Hearing Judge determines from the presentation and review of the evidence that the Prosecution HAS PROVEN that the Permittee, J & K Barnett, d/b/a Vineyard #1, has violated the following statutes:

Recklessly furnishing alcoholic beverage(s) to minor(s), in violation of Indiana Code 7.1-5-7-8; and
Allowing a minor to loiter in violation of Indiana Code 7.1-5-7-10 (b).

WHEREFORE, the Hearing Judge recommends the following disposition to the Commission:

Fine in the amount of five hundred (\$500.00)

Dated: _____

E. Edward Dunsmore Hearing Judge
Alcohol and Tobacco Commission